

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed May 4, 2005. Upon entry of the amendments in this response, claims 1 – 38 and 48 – 58 remain pending. More specifically, Applicants amend claim 55. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

I. Claim Objections

The Office Action objects to claim 55 as including a clerical error. More specifically, the Office Action indicates that claim 55 appears to depend from claim 48. Applicants amend claim 55 to depend from 48 and submit that this claim is now in condition for allowance. Additionally, Applicants submit that this amendment is cosmetic in nature and should not be construed to invoke prosecution history estoppel.

II. Rejections Under 35 U.S.C. §103

In order for a claim to be properly rejected under 35 U.S.C. §103, the teachings of the cited art reference must suggest all features of the claimed invention to one of ordinary skill in the art. *See, e.g., In re Dow Chemical*, 837 F.2d 469, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 642 F.2d 413, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981). Further, “[t]he PTO has the burden under section 103 to establish a prima facie case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” *In re Fine, Minnesota Mining and Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

A. Claims 1 and 48 are Patentable

While the Office Action rejects claims 1 and 48 as a group, Applicants respectfully submit that the scopes of these claims are not coterminous. Hence, Applicants respectfully submit that the Office Action improperly rejects these claims as a group. MPEP §707.07. However, in an effort to advance prosecution of the application, Applicants address the novel and nonobvious features of each of the rejected independent claims.

1. Claim 1 is Patentable Over *Bowman-Amuah* in View of *Tunnicliffe*

The Office Action indicates that claim 1 stands rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,542,593 to Bowman-Amuah (“*Bowman*”) and further in view of U.S. Patent No. 6,272,110 to Tunnicliffe, et al. (“*Tunnicliffe*”). Applicants respectfully traverse this rejection for at least the reason that *Bowman* in view of *Tunnicliffe* fails to disclose, teach, or suggest all of the elements of claim 1. Claim 1 recites:

A method of providing network access across a shared communications medium between competing users pursuant to service level agreements (SLAs) of the users, comprising the steps of:

- (a) ***monitoring network access usage by each user during a time interval;***
- (b) comparing said monitored network access usage ***by each user*** with a predetermined threshold value; and
- (c) soliciting a user to modify the user's SLA if the user's ***monitored*** network access usage varies ***from the predetermined value*** by a predetermined tolerance.

More specifically, *Bowman* discloses “monitoring service or product quality on a service class basis...” (col. 22, line 47). Additionally, *Bowman* discloses “[t]he Customer Quality of Service Management Process 134 encompasses monitoring, managing and reporting of quality of

service... and other service-related documents” (col. 22, beginning line 13). Applicants respectfully submit that this is different than “***monitoring network access usage by each user during a time interval***” as disclosed in claim 1. Applicants submit that for at least this reason, claim 1 is patentable over *Bowman* in view of *Tunncliffe*.

Additionally, the Office Action states that *Tunncliffe* discloses “soliciting a user to modify the user’s SLA if the user’s monitored network access usage varies from the predetermined value by a predetermined tolerance,” (OA p. 4, second item). Applicants respectfully disagree with this analysis. *Tunncliffe* includes a “predictor arranged to predict a plurality of sequential future values... and it can be determined whether these [future values] exceed the bandwidth levels agreed (for example, in the service level agreement). The customer is then able to take action in advance of the agreed levels being exceeded,” (col. 2, beginning line 1). Applicant submits that this is vastly different than “soliciting a user to modify the user’s SLA if the user’s ***monitored network access usage varies from the predetermined value*** by a predetermined tolerance” as recited in claim 1. For at least this additional reason Applicants submit that claim 1 is patentable over *Bowman* in view of *Tunncliffe*.

2. Claim 48 is Patentable Over *Bowman-Amuah* in View of *Tunncliffe*

The Office Action indicates that claim 48 stands rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,542,593 to Bowman-Amuah (“*Bowman*”) and further in view of U.S. Patent No. 6,272,110 to Tunncliffe, et al. (“*Tunncliffe*”). Applicants respectfully traverse this rejection for at least the reason that *Bowman* in view of *Tunncliffe* fails to disclose, teach, or suggest all of the elements of claim 48. Claim 48 recites:

A method of providing network access across a shared communications medium between competing users pursuant to service level agreements (SLAs) of the users, comprising the steps of:
monitoring network access usage *by each user for respective predetermined past time intervals*;
identifying a recurrent period of high network access usage of a user based on said monitoring; and
soliciting a user to modify the user's SLA to *guarantee a minimum level of network access during an anticipated future recurrent period of high network access usage*.

More specifically, *Bowman* discloses “monitoring service or product quality on a service class basis...” (col. 22, line 47). Additionally, *Bowman* discloses “[t]he Customer Quality of Service Management Process 134 encompasses monitoring, managing and reporting of quality of service... and other service-related documents” (col. 22, beginning line 13). Applicants respectfully submit that this is different than “monitoring network access usage *by each user for respective predetermined past time intervals*” as disclosed in claim 48. Applicants submit that for at least this reason, claim 48 is patentable over *Bowman* in view of *Tunncliffe*.

Additionally, the Office Action states that *Tunncliffe* discloses “soliciting a user to modify the user’s SLA if the user’s monitored network access usage varies from the predetermined value by a predetermined tolerance,” (OA p. 4, second item). Applicants respectfully disagree with this analysis. *Tunncliffe* includes a “predictor arranged to predict a plurality of sequential future values... and it can be determined whether these exceed the bandwidth levels agreed (for example, in the service level agreement). The customer is then able to take action in advance of the agreed levels being exceeded,” (col. 2, beginning line 1). Applicant submits that this is vastly different than “soliciting a user to modify the user's SLA to *guarantee a minimum level of network access during an anticipated future recurrent*

period of high network access usage” as recited in claim 48. For at least this additional reason Applicants submit that claim 48 is patentable over *Bowman* in view of *Tunnicliffe*.

B. Claims 2 – 38 and 49 – 58 are Patentable Over *Bowman-Amuah* in View of *Tunnicliffe*

In addition, dependent claims 2 – 38 are believed to be allowable for at least the reason that these claims depend from allowable independent claim 1. Further, dependent claims 49 – 58 are believed to be allowable for at least the reason that they depend from allowable independent claim 48. *In re Fine, Minnesota Mining and Mfg.Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

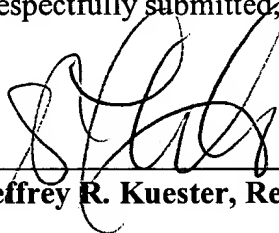
CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested.

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Further, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions.

If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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